

**MONTANA WETLANDS LEGACY PROJECTS**  
**CONTRACT NUMBER: SPB04-878P-I**

**1. PARTIES**

THIS CONTRACT, is entered into by and between the State of Montana Department of Administration, State Procurement Bureau (hereinafter referred to as "the State"), whose address and phone number are Room 165 Mitchell Building, 125 North Roberts St., PO Box 200135, Helena MT 59620-0135, (406) 444-2575 and **TerraGraphics Environmental Engineering, Inc.**, (hereinafter referred to as the "Contractor"), whose nine digit Federal ID Number, address and phone number are 82-0395020, 121 S Jackson, Moscow ID 83843, and (208) 882-7858.

**THE PARTIES AGREE AS FOLLOWS:**

**2. EFFECTIVE DATE, DURATION, AND RENEWAL**

**2.1 Contract Term.** This contract shall take effect upon full execution of all signatory parties, and terminate on June 30, 2008, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

**2.2 Contract Renewal.** This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State, for a period not to exceed a total of three additional years. This renewal is dependent upon legislative appropriations.

**3. NON-EXCLUSIVE CONTRACT**

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

**4. COOPERATIVE PURCHASING**

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units.

**5. SERVICES AND/OR SUPPLIES**

Contractor agrees to provide the State with an expedited means of hiring qualified contractors to provide Wetland, Stream, and other Aquatic Resource restoration, enhancement, and development design and implementation for various projects around the State of Montana. This contract will be utilized primarily by FWP but other state agencies or public procurement units may utilize this contract in conjunction with wetland, stream, and other aquatic resource restoration, enhancement and development projects.

The Contractor may need to have access to engineering services depending on the nature of the project. The Contractor will be expected to use their own best judgment as to whether engineering services are needed for a given project. However, traditional engineering methodologies are not the emphasis of this contract. It is a violation of State Statute to practice engineering or land surveying without a license.

**5.1 Design Expectations.** FWP prefers stream restoration improvement techniques that simulate natural conditions and facilitate natural stream processes. The State is always open to new and innovative approaches that accomplish project goals providing these techniques have proven success.

**5.2 Contractor Responsibilities.** The selected contractor for an individual project is responsible for the supervision and implementation of the designs and is responsible for oversight of work performed by all subcontractors. In most cases the contractor will provide and be responsible for all the necessary equipment, materials, supplies and personnel necessary for proper execution of the work. However, the State reserves the right to hire subcontractors (equipment and/or labor) if it will provide a cost savings to the State. The selected contractor is also responsible for clean up of the sites and must have the sites inspected by the State immediately prior to completion.

**5.3 Permits.** The Contractor is responsible for obtaining all necessary permits for each project, including but not limited to 404 permits, 310 (streambank preservation) permits, other permits, SHPO clearance, and water rights.

**5.4 On-Site Requirements/Cleanup.** When a contractor is contacted by the State to discuss a project, the State and the contractor will visit the job site to become familiar with conditions relating to the project and labor requirements. The State and chosen contractor will then cooperatively develop project feasibility, conceptual design and cost.

The Contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. The Contractor shall be responsible for all damages or injury due to their action or neglect.

The Contractor shall maintain access to all phases of the project pending inspection by the State or its representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The Contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the Contractor fail to respond to the notice or not remedy the defects, the State may have the work corrected at the expense of the Contractor.

In terms of cleanup, the Contractor shall:

- (a) Keep the premises free from debris and accumulation of waste;
- (b) Clean up any oil or fuel spills;
- (c) Keep machinery clean and free of weeds;
- (d) Remove all construction smears and stains from finished surfaces;
- (e) Perform finishing site preparation to: (1) limit the spread of noxious weeds, and (2) smooth exposed ground surface to enhance aesthetics, provide silt-footing, and provide uniform bed for future revegetation work before final payment by the State;
- (f) Remove all construction equipment, tools and excess materials before final payment by the State; and
- (g) Install silt fences as necessary, prevent fall-back of excavated materials, and prevent any other potential violations of federal or state water protection laws during the period of construction.

**5.5 Work Acceptance.** The Contractor is responsible for project oversight as needed. The State may also periodically provide personnel for administrative oversight from the initiation of the contract through project completion. All work will be inspected by the State or designated liaison prior to approval of any contract payments. All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance. Contractor shall respond within seven calendar days after notice of defects has been given by the State and proceed to immediately remedy all defects.

**5.6 Records.** The Contractor will supply the State with photo documentation of methods of habitat restoration progress throughout project implementation. Contractor will maintain records for themselves and all subcontractors of supplies, materials, equipment and labor hours expended.

**5.7 Communication.** During a project the chosen contractor is required to make weekly contact with the State liaison, or other parties designated by the State for communications, to make arrangements for field inspections and project compliance. This communication must be made in person or by telephone conversation with designated liaisons. Voice mail recordings will not be considered communication unless approved by the State's project contact.

Remoteness of project sites may necessitate that the Contractor have some form of field communication such as a cellular phone. This communication is necessary to enable the State to respond to public concerns related to the project, accidents, inspections, or other project issues that require immediate feedback. Weekly communication will commence when the chosen contractor initiates project implementation.

**5.8 Project Monitoring and Reports to the Corps of Engineers.** The Contractor is responsible for monitoring their projects and reporting to the Corps of Engineers about the development of wetland and stream function resulting from the project. In this way, the Corps will know whether wetland credit for the project has been earned.

**5.9 Change Of Staffing.** Since qualifications of personnel were key in determining which offeror's were selected to be on this term contract, a written notification to the State Agency requesting services of any contractor changes of key personnel must be made prior to entering into negotiations to perform any specific work scope. Contractor shall replace such employee(s) at its own expense with an employee of substantially equal abilities and qualifications without additional cost to the Agency. If these staffing changes cause the contractor to no longer meet the qualifications stated herein, that firm will be removed from the service area of this term contract. Failure to notify the State Agency of staffing changes could result in the contractor being removed from the term contract listing and possible suspension from bidding on other State projects.

**5.10 Collaboration on Potential Projects.** The State encourages collaboration between Contractors to increase the scope and effectiveness of services offered. All subcontractors to be used in any project must be approved by FWP or the authorized entity initiating the project.

## **6. PROJECT SELECTION**

The State will be responsible for identifying projects, contacting landowners and securing necessary permission/cooperation agreements, selecting a contractor, writing grant applications and approving project payments.

The State will not initiate projects where it is known that hazardous materials are present. If there is an indication of a potential of hazardous materials, then the State will do testing prior to contacting the Contractor. However, there is always the possibility of unforeseen problems resulting in the stoppage of a project.

The selected contractor will be required to meet with State personnel at the project site to conduct a site evaluation, discuss project issues and begin the negotiation process on project feasibility, conceptual design and costs for each project.

## **7. CONTRACTOR SELECTION**

The State may select a term contract holder from the Environmental Services Contract-Home page under MT Wetlands Legacy Projects as provided under the state's website address <http://www.discoveringmontana.com/doa/gsd/procurement/TermContracts/environservices/Default.asp> , taking into consideration such things as the contractor's expertise, requirements and location of the project, the contractor's availability and access to resources necessary to efficiently and effectively complete the project, demonstrated excellent past performance on State and public projects, identified subcontractors and total project cost.

**7.1 General.** Ordering agencies shall use the procedures in this section when ordering services priced at hourly rates as established by each Term Contract (TC).

**7.2 Request for Quotation (RFQ) procedures.** The ordering agency must provide an RFQ, which includes the statement of work and limited but specific evaluation criteria (e.g., experience and past performance), to all TC contractors. The RFQ may be posted to the agency's state website to expedite responses.

**7.3 Statement of Work (SOW's).** All SOW's shall include at a minimum a detailed description of the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements (e.g., security clearances, travel, special knowledge).

- (1) Ordering agency may select a contractor from the appropriate list and directly negotiate a mutually acceptable project based on a sudden and unexpected happening or unforeseen occurrence or condition, which requires immediate action (Exigency).
- (2) Ordering agency may place orders at, or below the \$5,000 threshold with any term contract contractor that can meet the agency's needs. The ordering agency should attempt to distribute orders among all contractors.
- (3) For orders estimated to exceed \$5,000 but less than \$25,000.
  - (i) The ordering agency shall develop a statement of work.
  - (ii) The ordering agency shall provide the RFQ (including the statement of work and evaluation criteria) to at least three TC contractors.
  - (iii) The ordering agency shall request that contractors submit firm-fixed prices to perform the services identified in the statement of work.
- (4) For orders estimated to exceed \$25,000. In addition to meeting the requirements of 3 above, the ordering agency shall:
  - (i) Provide the RFQ (including the statement of work and the evaluation criteria) to all TC contractors .

**7.4 Evaluation.** The ordering agency shall evaluate all responses received using the evaluation criteria provided in the RFQ to each TC contractor. The ordering agency is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. The agency will place the order with the contractor that represents the best value. After award, ordering agencies will provide timely notification to unsuccessful TC contractors. If an unsuccessful TC contractor requests information on a task order award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.

**7.5 Minimum documentation.** The ordering agency shall document:

- (1) The TC contractors considered, noting the contractor from which the service was purchased;
- (2) A description of the service purchased;
- (3) The amount paid;
- (4) The evaluation methodology used in selecting the contractor to receive the order;
- (5) The rationale for making the selection;
- (6) Determination of price fair and reasonableness.

Agency project task orders will be utilized to finalize the project. Only written addenda will be used for adjustments of the task orders and must be signed by both parties. All task orders must contain signatures from both parties and appropriate agency legal review as directed in their procurement policy.

The State will monitor contractor selection by using the information provided in the annual term contract usage reports.

Contractor's who fail to respond to three (3) RFQ opportunities within a one-year period between July 1<sup>st</sup> and June 30<sup>th</sup>, may be removed from the qualified list of contractors.

## **8. CONSIDERATION/PAYMENT**

**8.1 Payment Schedule.** In consideration for the Montana Wetlands Legacy projects to be provided, the State shall pay according to the prices listed in Attachment B. Project budgets will be negotiated for each individual project. However, all rates, terms and conditions set forth in this term contract will be applied to individual contracts.

**8.2 Invoicing Methods.** The State reserves the right to choose the invoicing method from the following: (1) Prime contractor's billing will include the subcontractors charges and payment will be made to the prime; or (2) Prime and subcontractors will bill the State separately and the State will pay each directly.

**8.3 Withholding of Payment.** The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

## **9. COST/PRICE ADJUSTMENTS**

**9.1 Price Increases Negotiated Based on Increases in Contractor's Costs.** Price increases may be permitted at the time of contract renewal through a process of negotiation with the Contractor and the State. Any price increases must be based on demonstrated industry-wide or regional increases in the Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

Contractor must provide written, verifiable justification for any cost adjustments they request during each renewal period. Contractor shall provide its cost adjustments in both written and electronic format.

## **10. TERM CONTRACT REPORTING**

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the project description, total dollars expended, and the name of the agency purchasing the services. The first report for this term contract will be due July 16, 2005.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

## **11. CONTRACTOR WITHHOLDING**

Section 15-50-206, MCA, requires the state agency or department for whom a public works construction contract over \$5,000 is being performed, to withhold 1 percent of all payments and to transmit such monies to the Department of Revenue.

## **12. MONTANA PREVAILING WAGE REQUIREMENTS**

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, at least 50% of the workers of each contractor engaged in construction services must be performed by bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA, and falls under the category of Heavy Construction and Nonconstruction services. The booklets containing Montana's 2003 Rates for Heavy Construction and Nonconstruction Services are attached.

The most current Montana Prevailing Wage Booklet will automatically be incorporated at time of renewal. It is the contractor's responsibility to ensure they are using the most current prevailing wages during performance of its covered work.

### **13. ACCESS AND RETENTION OF RECORDS**

**13.1 Access to Records.** The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

**13.2 Retention Period.** The Contractor agrees to create and retain records supporting the Montana Wetlands Legacy projects for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

### **14. ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

### **15. HOLD HARMLESS/INDEMNIFICATION**

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

## **16. REQUIRED INSURANCE**

**16.1 General Requirements.** The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**16.2 Primary Insurance.** The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

**16.3 Specific Requirements for Commercial General Liability.** The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

**16.4 Additional Insured Status.** The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

**16.5 Specific Requirements for Automobile Liability.** The Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

**16.6 Additional Insured Status.** The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, hired, or borrowed by the Contractor.

**16.7 Specific Requirements for Professional Liability.** The Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

**16.8 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, and volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**16.9 Certificate of Insurance/Endorsements.** A certificate of insurance from insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

## **17. COMPLIANCE WITH THE WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, upon expiration.

## **18. COMPLIANCE WITH LAWS**

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

## **19. INTELLECTUAL PROPERTY**

All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

## **20. PATENT AND COPYRIGHT PROTECTION**

**20.1 Third Party Claim.** In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

**20.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

## **21. CONTRACT TERMINATION**

**21.1 Termination for Cause with Notice to Cure Requirement.** The State may terminate this contract for failure of the Contractor to perform any of the services, duties, or conditions contained in this contract after giving the Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**21.2 Reduction of Funding.** The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)



## **22. STATE PERSONNEL**

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

**22.1 State Contract Manager.** The State Contract Manager identified below will be the single point of contact for the coordination of all contract issues under this contract. The State Contract Manager will meet with the Contractor Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The State Contract Manager for this contract is:

Robert Oliver, Contracts Officer  
State Procurement Bureau  
Room 165, Mitchell Building  
125 North Roberts  
PO Box 200135  
Helena MT 59620-0135  
Telephone #: (406) 444-0110  
Fax #: (406) 444-2529  
E-mail: [ROliver@mt.gov](mailto:ROliver@mt.gov)

**22.2 State Project Manager.** The State Project Manager identified below will manage the day-to-day project activities on behalf of the State.

The State Project Manager for this contract is:

Tom Hinz, Coordinator  
Montana Wetlands Legacy  
1400 South Nineteenth  
Bozeman MT 59718  
Telephone #: (406) 994-7889  
Fax #: (406) 994-4090  
E-mail: [thinz@montana.edu](mailto:thinz@montana.edu)

## **23. CONTRACTOR PERSONNEL**

**23.1 Identification/Substitution of Personnel.** The personnel identified or described in the Contractor's proposal shall perform the services provided for the State under this contract. Contractor agrees that any personnel substituted during the term of the contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Contractor personnel assigned to work under the contract, and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve the Contractor to perform and be responsible for its obligations under this Contract. The State reserves the right to require Contractor personnel replacement. In the event that Contractor personnel become unavailable, it will be the Contractor's responsibility to provide an equally qualified replacement in time to avoid delays to the work plan.

**23.2 Contractor Contract Manager.** The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:

Jerry Lee  
121 South Jackson Street  
Moscow ID 83843  
Telephone #: (208) 882-7858  
Fax #: (208) 883-3785  
E-mail: [office@tgenviro.com](mailto:office@tgenviro.com)  
[munkersj@tgenviro.com](mailto:munkersj@tgenviro.com)

**23.3 Contractor Project Manager.** The Contractor Project Manager identified below will manage the day-to-day project activities on behalf of the Contractor:

The Contractor Project Manager for this contract is:

Jerry Lee  
121 South Jackson Street  
Moscow ID 83843  
Telephone #: (208) 882-7858  
Fax #: (208) 883-3785  
E-mail: [office@tgenviro.com](mailto:office@tgenviro.com)  
[munkersj@tgenviro.com](mailto:munkersj@tgenviro.com)

## **24. MEETINGS**

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

## **25. CONTRACTOR PERFORMANCE ASSESSMENTS**

The State may do assessments of the Contractor's performance. This contract may be terminated for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to terminate this contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of contract termination. Performance assessments may be considered in future solicitations.

## **26. TRANSITION ASSISTANCE**

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

**27. CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

**28. SCOPE, AMENDMENT AND INTERPRETATION**

**28.1 Contract.** This contract consists of 11 numbered pages, any Attachments as required, RFP #SPB04-878P, as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

**28.2 Entire Agreement.** These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

**29. EXECUTION**

The parties through their authorized agents have executed this contract on the dates set out below.

**DEPARTMENT OF ADMINISTRATION  
STATE PROCUREMENT BUREAU  
PO BOX 200135  
HELENA MT 59620-0135**

**TERRAGRAPHS ENVIRONMENTAL ENGINEERING  
121 S JACKSON  
MOSCOW ID 83843  
FEDERAL ID # 82-0395020**

BY: Penny Moon, Contracts Officer  
(Name/Title)

BY: \_\_\_\_\_  
(Name/Title)

BY: \_\_\_\_\_  
(Signature)

BY: \_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

# ATTACHMENT A

## CONTRACTOR'S RFP RESPONSE

### SECTION 3.0 GENERAL OVERVIEW

#### 3.3.1 Design Expectations

TerraGraphics understands and will comply. TerraGraphics has extensive experience applying stream restoration improvement techniques utilizing natural channel design, stream classification, fluvial geomorphic principles, fish species of interest criteria, and native planting and revegetation schemes to facilitate the natural stream process. We have worked on some of the most difficult stream rehabilitation project sites in the region requiring innovation and a thorough knowledge base of the science, engineering, and construction aspects needed to utilize the myriad of techniques for stream function and habitat recovery.

#### 3.3.2 Contractor Responsibilities

TerraGraphics understands and will comply. Tom Bourque will be the **Project Manager** providing overall direction and guidance to the project team. All client/consultant communications will be conducted through TerraGraphics. Montana State's Department of Fish, Wildlife and Parks progress reports and invoices will be submitted to the State per their format and procedure. TerraGraphics contract accounting procedures comply with all pertinent state and federal requirements. All personnel, sub-contractor and consultants expenditures, work progress, performance, and deliverables information will be summarized and submitted monthly. Our local TerraGraphics contact for the Montana Wetlands Legacy Project will be **Karen Williams at (406) 782-5537, 2731 Princeton Street, Butte, Montana 59701.**

Decision-making will be made at the task level as long as budget, schedule, and scope are not affected. Otherwise, the project manager will intervene and consult with Montana FWP. Project direction and scope implementation will be the responsibility of the Project Manager. The Project Manager will work the Montana FWP representative and identified stakeholders on larger technical issues. Smaller technical issues will be summarized in the phase reports and presented to Montana Fish, Wildlife and Parks and stakeholders.

Quality Assurance/Quality Control is important to TerraGraphics. We have a written procedure for technical and editorial review, approval by the Task Management and concurrence from the Project Manager. Editors and third party technical staff are available to support this program.

TerraGraphics is prepared to work with Montana Fish, Wildlife and Parks on change orders. If a change order is identified, TerraGraphics will review the task to determine whether it can be captured within existing activities and schedules. If the task cannot, TerraGraphics will develop a scope of work agreeable to FWP. A budget will then be developed and negotiated. If a schedule extension is required, TerraGraphics will include this request in the scope and budget package. Upon written authorization from FWP or their designated contract entity, TerraGraphics will proceed with the terms of the change order.

TerraGraphics recognizes that project delays and changes in scope may occur. TerraGraphics will endeavor to work with Montana FWP to remain flexible and adjust to the project needs. If adjustments cause an impact to TerraGraphics' ability to meet contractual scopes, schedules and budgets or delays move the project schedule beyond the contract time, TerraGraphics would require appropriate adjustments to our contract.

#### 3.3.3 Permits

TerraGraphics understands and will comply. TerraGraphics is experienced with Corps of Engineering and State permitting, Endangered Species Act compliance, NEPA, stream alteration, wetland permitting, and other pertinent permit processes.

### **3.3.4 On-site Requirements/Cleanup**

TerraGraphics understands and will comply. TerraGraphics has experience with very sensitive construction water quality, environmental, and human health site control requirements. We have developed innovative construction techniques to maintain strict turbidity and stream function standards for endangered species during complete stream reconstruction.

### **3.3.5 Work Acceptance**

TerraGraphics understands and will comply. As Prime Engineering and Scientific Contractor for the State of Idaho on the Bunker Hill and Coeur d'Alene Basin Environmental Cleanup, TerraGraphics has tremendous experience in project oversight, performance standards, and work acceptance.

### **3.3.6 Records**

TerraGraphics understands and will comply.

### **3.3.7 Communication**

TerraGraphics understands and will comply. Communication will be by telephone, fax, e-mail, and TerraGraphics' new interactive Web site ([www.tgenviro.com](http://www.tgenviro.com)) that allows password entrance by Montana state's FWP project representatives who can check progress, compliance, monitoring results, project budgets and other information identified by FWP. Design drawings and other large documents will be posted on the secure Web site for real time exchange with FWP.

### **3.3.8 Project Monitoring and Reports to the Corps of Engineers**

TerraGraphics has more than ten years of experience interacting with the Corps of Engineers from working as the prime contractor overseeing the Bunker Hill Superfund Clean-up site to our work on the Milo Creek Flood Mitigation project. This includes monitoring the projects and reporting to the Corps of Engineers regarding status and relevant issues. Wetland credits communications also specifically occurred on the Red River Project.

### **3.3.9 Change of Staffing**

TerraGraphics understands and will comply.

### **3.3.10 Collaboration on Potential Projects**

TerraGraphics understands and will comply. TerraGraphics has had between five and fifteen subcontractors working on our projects at any given time. We have tremendous experience in utilizing teams of subcontractors and individuals on our projects.

### **3.3.11 Subcontractors**

#### ***Equipment Operators***

#### **Stream Works Inc.**

Richard Thumma, President and Co-owner  
PO Box 878  
Lincoln, Montana 59639  
(406) 362-4727

**Mungas Co. Inc.**

Mining & Construction  
PO Box 236  
Philipsburg, MT 59858  
(406) 859-2303

**Yellowstone Track Systems, Inc.**

Doug Edgerton, President  
PO Box 29  
West Yellowstone, MT 59758  
(406) 646-7603  
[skiyts@aol.com](mailto:skiyts@aol.com)

**Stewart Contracting Inc.**

Greg Stewart, President  
202 S. Division  
PO Box 1275  
Pinhurst, Idaho 83850  
1 (208) 682-9018  
1 (208) 682-9472  
[www.stewartcontracting.com](http://www.stewartcontracting.com)

***Stream and Wetland Restoration Companies***

**TerraGraphics** will be providing engineering, stream, and wetland restoration staff.

**Hydrotech**

Jack Thomas  
2031 11<sup>th</sup> Ave.  
Helena, MT 59601  
(406) 443-8577  
[hydrotec@montana.com](mailto:hydrotec@montana.com)

**Hoitsma Ecological, Inc.**

Todd Hoitsma  
Hoitsma Ecological Inc.  
321 East Main Suite 400  
Bozeman, MT 59715  
Phone (406) 581-1972

***Riparian Revegetation Specialists*****Bitterroot Restoration**

Gant Massey, Wetland Ecologist  
445 Quast Lane  
Corvallis, MT 59828  
Phone: (406) 961-4991  
Fax: (406) 961-4626

**Wildlife Habitat Institute**

Denny Dawes  
1025 E. Hatter Crk. Rd.  
Princeton, ID 83857  
(208) 875-2500

**Big Horn Environmental Sciences, LLC**

Richard A. Prodgers, President; Plant Ecologist-Reclamation specialist

Main Office

610 Monroe Ave.

Dillon, MT 59725

(406) 683-9718

**SECTION 4.0 STATE'S RIGHT TO INVESTIGATE AND REJECT**

TerraGraphics understands and will comply.

**4.1 Offeror Informational Requirements**

TerraGraphics understands and will comply.

**4.1.1 References**

The following are references:

**TerraGraphics Environmental Engineering**

Contact: Rob Hanson

Agency: Idaho Department of Environmental Quality,  
Boise, Idaho  
(208) 373-0290.

Dates of Service: 1992 to present

Work Description: Comprehensive scientific and engineering services within the Coeur d'Alene Basin, designated as the largest government-lead superfund site in the country. Specific to stream and wetland projects, TerraGraphics has worked on several floodplain, stream, and river projects performing planning, costing, design, construction oversight, and operations and maintenance planning.

Contact: Mike Furniss

Contracting Entity: USDA Forest Service, Pacific Northwest Research Station,  
200 SW Jefferson Way, Corvallis, Oregon 97331,  
(541) 758-7789

Dates of Service: 1998 to present

Work Description: Lead Hydraulic Engineer for development of FishXing fish passage model utilized by the Forest Service for assessing fish passage and fish capabilities relative to culvert and confined stream restrictions.

Contact: Tom Lamar

Contracting Entity: Palouse Clearwater Environmental Institute (Non-profit)  
PO Box 8596  
Moscow, Idaho 83843  
(208) 8821444

Dates of Services: 1995 to present

Work Description: Lead Stream Restoration engineer developing all permitting, design, and construction of dryland stream, floodplain, and wetlands rehabilitation. Developed designs based on hydrologic models, stream classification, and fluvial geomorphologic relationships. Directed all construction and completed all permitting application analysis requirements.

## References for Yellowstone Track Systems, Inc.

Contact: Mark Story, hydrologist  
Contracting Entity: Gallatin National Forest  
US Forest Service  
[mstory@fs.fed.us](mailto:mstory@fs.fed.us)  
406-522-8573

Contact: Scott Barndt  
Contracting Entity: Gallatin National Forest  
US Forest Service  
Bozeman District Office  
[sbarndt@fs.fed.us](mailto:sbarndt@fs.fed.us)

Contact: John Councilman, Resource Advisor  
Contracting Entity: Gallatin National Forest  
US Forest Service  
Bozeman District Office  
[jcouncilman@fs.fed.us](mailto:jcouncilman@fs.fed.us)

Contact: Susan Lamont  
Contracting Entity: Gallatin National Forest  
Hebgen District  
(406) 823-6976  
[slamont@fs.fed.us](mailto:slamont@fs.fed.us)

## References for Bitterroot Restoration

Contact: Joel Chavez  
Mine Waste Cleanup Bureau  
Montana Department of Environmental Quality  
1100 Last Chance Gulch  
P.O.Box 200902  
Helena, MT 59620-0902  
406-841-5031  
[jchavez@state.mt.us](mailto:jchavez@state.mt.us)

Project Description: Silver Bow Creek project consisted of revegetation planning and oversight, soil, hydrology, and wetland inventory, and revegetation implementation/weed control services for Subarea 1 and preliminary planning for Subarea 2 of the Streamside Tailings Operable Unit (SSTOU) of the Silver Bow Creek/Butte Area NPL Site.

Contact: Robin Bullock  
Atlantic Richfield Co.  
317 Anaconda Road  
Butte, MT 59701  
406-782-9964 x-414  
[bullori@bp.com](mailto:bullori@bp.com)

Project Description: During 1996 and 1998, Dr. Paul Hansen and his team planned, secured official permitting, implemented, and monitored streambank stabilization treatments to test a range of designs as alternatives to “hard” treatments, such as riprap and rigid structures. The objective was to test effectiveness of a suite of “soft” treatments in reducing erosion and to evaluate their relative costs as functions of the severity of streambank instability and other factors. Twelve different treatments were installed on 14 reaches totaling 5,708 feet of streambank. In addition, 9,455 feet of streambank were analyzed as five separate untreated control reaches. Monitoring data on 140 permanently monumented cross sections within the study has yielded insights on the relative cost effectiveness



among the various combinations of methods, including streambank reshaping, revegetation with seedlings and mature transplants, use of coir fabric and fascine, and the installation of rock, root-wads, and logs.

#### **References for Stewart Contracting Inc.**

Contact: Marti Calabretta, Project Manager, (208) 752-6371  
Contracting Entity: Silver Valley Natural Resource Trustees  
Dates of Service: 1997, 1998  
Project Description: Frisco Mine Tailings Removal and Floodplain project consisted of removal of over 100,000 cubic yards of contaminated mine tailings that were deposited in the streambed of Canyon Creek. After removal of tailings, streambed was stabilized by application of several stream control structures. These included log and root wad structures, riprap structures, soil treatments, gradient control structures and sediment control basins. Work was completed over a two-year period.

Contact: Marti Calabretta, Project Manager, (208) 752-6371  
Contracting Entity: Silver Valley Natural Resource Trustees  
Dates of Service: 1998, 1999  
Project Description: Coeur d'Alene River Bank Stabilization project consisted of placing armor rock in a large windrow about 10 feet off of the existing river bank. The structure was tied into the river bank on each end allowing a wetland area to form behind the armor rock windrow. Area behind the windrow was planted with native wetland vegetation and allowed to stabilize. Since no existing bank area disturbance was permitted, the entire project was performed off of a floating barge platform with a Caterpillar hydraulic excavator. Work was completed over a two-year period.

Contact: Nick Zilka, Project Manager  
South Fork CdA River Stabilization  
(208)783-5781  
Contracting Entity: Idaho Department of Environmental Quality  
Dates of Service: 2002  
Project Description: South Fork Coeur d'Alene River Stabilization project consisted of reshaping the entire stretch of river between the communities of Kellogg and Smelterville. Site access was established with the installation of a decon station and a temporary bridge. Channel was set to a specified grade with dozers and a hydraulic excavator. Various stream structures and applications were incorporated into the river bed. These included log and rootwad structures, riprap structures, cutoff trenches, overflow channeling, soil treatments and plantings. Work was conducted over a six-month period.

Contact: Amadeo Rossi, Project Manager  
Contracting Entity: CH2MHILL  
(425) 453-5000  
Dates of Service: 2000  
Project Description: Highway 3 Vegetative Geo-grid and Parking Area Installation project consisted of constructing a vegetative geogrid structure to stabilize a section of riverbank adjacent to the new parking area. River bank was excavated and contour to accept the geogrid installation. Geogrid consisted of an in-sloped quarry spall based followed by seven geogrid lifts stair stepped toward the parking area. Each lift was approximately 1.5 feet in thickness and 12' wide. Total structure was 125 feet in length. After the completion of the geogrid, a new parking area was constructed with a connecting trail to the Rails to Trails Recreation Trail. Work was completed over a five-month period.

Contact: Marti Calabretta  
Project Manager  
208-752-6371

Contracting Entity: Silver Valley natural Resource Trustees  
Dates of Service: 1997  
Project Description: Gem Mill Site Reclamation project consisted of contouring, grading, hauling and shaping the Gem Mill Site in order to keep mill site tailings from being deposited into Canyon Creek. After contouring, the area was capped and revegetated. Work was conducted over a three-month period.

Contracting Entity: US Army Corps of Engineers  
Date of Service: 1996  
Project Description: Project consisted of rebuilding a section of the Pinecreek levy that was heavily damaged by flooding. Levy was brought up in lifts and compacted stream side of levy was protected by armoring the area with rip rap. Work was conducted over a two-month period.

Contact: Marti Calabretta, Project Manager, (208) 752-6371  
Contracting Entity: Silver Valley Natural Resource Trustees  
Dates of Service: 1997  
Project Description: Day Rock Fish Pond Reconstruction project consisted of rebuilding the Day Rock Fish Pond that was heavily damaged by flooding. Pond area was dewatered and excavated to deep end the pond. A new dike was constructed as well as rock in flow and out flow structures. A wheelchair accessible concrete was then installed. Work was conducted over a three-month period.

#### **References for HydroTech:**

Contact: Larry Bonderud, Mayor  
Contracting Entity: City of Shelby, Montana (406) 434-5222  
Dates of Service: 2003 to present  
Work Description: Marias River at Williamson Park. Project hydrologists for streambank stabilization (4,700 feet) adjacent to a city park on the Marias River, park infrastructure enhancements including walking paths and a boat ramp, and wellhead protection. Developed designs based on hydrologic models, stream classification and fluvial geomorphologic relationships. Responsible for local, state and federal project permitting, site revegetation, stormwater control and for construction oversight.

Contact: Spencer Kirk  
Contracting Entity: Hairpin Ranch, Jackson, Montana (801) 278-8330  
Dates of Service: 1997 to present  
Work Description: Hairpin Ranch - Andrus, Fox and Governor Creeks, Ponds and Wetlands. Project hydrologists for the restoration of three streams (12 miles total). Developed designs based on hydrologic models, stream classification and fluvial geomorphologic relationships with a focus on both stream restoration and fisheries habitat enhancement. Project hydrologists for the design of four ponds (1.5 to 6 acres), three wetlands (1 to 5 acres) and several irrigation diversion systems. Responsible for local, state and federal project permitting and for construction oversight.

Contact: Charlotte Lewis  
Contracting Entity: Broadwater Conservation District, Townsend, Montana -  
in cooperation with Montana Fish Wildlife and Parks, Montana Department of Environmental Quality and the Environmental Protection Agency. (406) 266-3146  
Dates of Service: 1996 to present  
Work Description: Deep Creek. Project hydrologists for the restoration and stabilization of Deep Creek - the first non-point source TMDL project in Montana. Developed designs

based on hydrologic models, stream classification and fluvial geomorphologic relationships with a focus on stream restoration, sediment reduction and fisheries habitat enhancement. Responsible for local, state and federal project permitting, project monitoring and reporting, TMDL development and for construction oversight.

Contact: Royal Rice

Contracting Entity: Montana Dept. of Fish, Wildlife & Parks, 1420 6th Avenue, Helena, MT 59620 (406) 841-4007

Dates of Service: 2000 to 2003

Work Description: Clark Fork River - Kohrs bend Fishing Access Site and Beavertail Park projects. Project hydrologists for streambank stabilization adjacent to a state-owned fishing access site and a state-owned park on the Clark Fork River. Developed designs based on hydrologic models, stream classification and fluvial geomorphologic relationships. Responsible for local, state and federal project permitting, site revegetation, stormwater control and for construction oversight.

Contact: Jim Stone, Chairman

Contracting Entity: Blackfoot Challenge, PO Box 148, Ovando, MT (406) 793-5830

Dates of Service: 1995 to 2000

Work Description: Served as the Executive Director for the Blackfoot Challenge, a "grass roots" watershed group which was organized to coordinate public and private land management activities within the Blackfoot River basin, its tributaries, and adjacent lands. Responsibilities included agency coordination, project development and facilitation, contract administration, fiscal management, budgeting, grant writing and grants management.

**Please see Appendix B for complete references and project descriptions for the following subcontractors:**

Stream Works, Lincoln, MT

Mungus Company, Phillipsburg, MT

Todd Hoitsma (Riparian Ecologist), Bozeman, MT

Bighorn Environmental Science (Plant Ecologist), Dillon, MT

Wildlife Habitat Institute, Potlatch, ID

#### **4.1.2 Company Qualifications**

**TerraGraphics Environmental Engineering, Inc. (TerraGraphics)** is pleased to submit this proposal to the State of Montana as the Principal Contractor for engineering, design, construction, oversight, and permitting for design and construction of wetland, stream and other aquatic restoration, enhancement and development projects throughout Montana. TerraGraphics has extensive experience developing innovative designs in stream and wetland restoration, working as prime contractor, and supervising and overseeing subcontractors to ensure completion of work.

**TerraGraphics** was founded in 1984 as a majority woman-owned consulting firm based in Moscow, Idaho.

**TerraGraphics** offers specialized environmental services in natural resources, engineering design, construction oversight, and environmental science. With offices in Moscow and Kellogg, Idaho, **TerraGraphics** maintains a core staff of 25 professionals providing services for private clients and to state, local, and federal government agencies. Principal clients are the Idaho Department of Environmental Quality (DEQ), University of Idaho, Idaho Division of Public Works, Panhandle Health District, Idaho Transportation Department, Agency for Toxic Substances and Disease Registry, Bureau of Disaster Services, the Nez Perce Tribe, the Idaho County Soil and Water Conservation District, the United States Forest Service (USFS), the U.S. Department of Justice, the US Environmental Protection Agency (EPA), and the Department of Energy (DOE). Contact: Tom Bourque, P.E., Engineering Manager, email: [bourquet@tgenviro.com](mailto:bourquet@tgenviro.com) or Jerry Lee, Administrative Project Manager, email: [leej@tgenviro.com](mailto:leej@tgenviro.com), 121 South Jackson Street, Moscow, ID 83843, phone: (208) 882-7858, fax: (208) 883-3785, Web: <http://www.tgenviro.com>.

**TerraGraphics** has more than ten years experience working with citizen groups, advisory groups, tribes, private landowners, and non-profit organizations.

**TerraGraphics** offers expertise in the following areas:

- ◆ Fish Passage
- ◆ Flood Management
- ◆ Stream Hydrology
- ◆ Stream Hydraulics
- ◆ Site investigation
- ◆ Environmental Sampling and Monitoring
- ◆ Hydrologic and Hydraulic modeling and assessment
- ◆ Irrigation system development, design, and construction
- ◆ Arid land, forested land, prairie land river design and construction
- ◆ Wetland delineation, design, and construction oversight
- ◆ Geomorphic assessment and Stream Classification
- ◆ Stream restoration and design
- ◆ Project engineering and design
- ◆ Engineering construction oversight
- ◆ Watershed restoration
- ◆ Risk assessment
- ◆ GIS and database management

As prime contractor on numerous projects, including the Bunker Hill and Coeur d'Alene Basin Superfund Cleanup in Northern Idaho for the last twelve years, we have experience maintaining confidentiality of records and written reports and actively working to obtain objective, high-quality project reviews. From our experience as the prime contractor on the Bunker Hill Superfund Cleanup, we have extensive experience working with state agencies, multiple state project managers, multi-Task Order contracts, and the ability to develop project feasibility, conceptual designs and costs.

**TerraGraphics** has a long history of teaming with companies to provide a full spectrum of environmental services. Specific to this proposal, we would add to our expertise in stream, wetland and aquatic resource restoration, enhancement and development by teaming with knowledgeable subcontractors, the majority of which are based in Montana, who specialize in stream and wetland construction and riparian revegetation. They are **Stream Works, Inc.**, Lincoln, Montana, specializing in stream rehabilitation construction; **Mungus Construction**, Phillipsburg, MT; specializing in stream rehabilitation construction; **Yellowstone Track Systems, Inc.**, West Yellowstone, Montana, specializing in stream reconstruction and culvert removal, **Bitterroot Restoration**, Corvallis, MT, specializing in riparian revegetation; **Bighorn Environmental Sciences LLC**, Dillon, Montana, specializing in riparian revegetation; **Hoitsma Ecological Inc.**, Butte, Montana, specializing in stream and wetland restoration and riparian revegetation, **Stewart Construction**, Pinehurst, Idaho, specializing in construction; **Hydrotech**, Helena, MT, specializing in stream and wetland restoration, **Wildlife Habitat Institute**, Princeton, ID, specializing in riparian revegetation. (Please see proposed subcontractor resumes, references and project descriptions in Appendices A & B)

**TerraGraphics** will be responsible for coordinating with the Montana Department of Administration, Fish Wildlife, and Parks, and project stakeholders. Project development, technical tasks breakout, billings, and document production will be conducted through TerraGraphics. TerraGraphics will endeavor to utilize our Montana subcontractors to the maximum extent. All subcontractors and specialists will perform their work through TerraGraphics. A State map illustrating our team's local offices is provided in Appendix B (Figure 1). TerraGraphics will utilize our team's offices, communication (Section 3.3.7), and regular visits with project managers to execute a strategic relationship with FWP.

TerraGraphics has more than ten years of specialized environmental restoration experience in designing and supervising construction of stream, wetland, and floodplain projects. Our approach to stream restoration projects utilizes several techniques. We have employed a variety of hydrology and hydraulic models and statistical analysis to develop critical stream flow data and design parameters. Applications of fluvial geomorphologic principles and stream classification provide both planform and channel design parameters. Fish species criteria are prioritized and applied to refine or dictate final configurations. Topographic, property, political, budgets, and stakeholder input are incorporated into the project development. Native species revegetation is important and utilized whenever possible.

We believe in and have practiced an interactive project process with the State of Idaho and stakeholders from the inception of our firm. We have been the prime contractor for the government on many of the region's most contentious projects. Our unique experience with stream/wetland restoration, construction, communications, impacted sites, and private/public stakeholders is our strength and would be utilized on all Legacy projects.

#### **4.1.3 Subcontractor Experience**

Please refer to Appendix B for project descriptions and resumes of proposed subcontractors.

#### **4.1.4 Previous Projects**

The following are project synopsis for relevant work experience performed by TerraGraphics. Please refer to Appendix A for complete TerraGraphics project descriptions with before and after pictures.

##### **Lower Red River Meadow, South Fork Clearwater River Basin, Idaho Stream restoration on lower gradient meandering river system**

Project Schedule: 1999 to Present. 3,500 Hours

Contact: Ms. Sabrina Keen (current) Bonneville Power Administration (client)

905 NE 11th Ave Portland, Oregon (800) 622-4520. Ms. Allyn Meuleman (former), Bureau of Reclamation (208) 378-5021

Position: TerraGraphics - Prime Engineer

Erik Ryan: Lead Designer and Construction Manager

Tom Bourque: Engineering Project Manager

TerraGraphics worked with a variety of private landowners and stakeholders to complete 4.5 miles of river restoration through a large high mountain meadow within the South Fork Clearwater River Basin in Idaho. Years of impact from logging, grazing, road building, and gold mining activities had destroyed fish spawning habitat. TerraGraphics used the MIKE 11 and HEC-RAS computer models to establish dominant flow, floodplain extent, scour/shear stresses, sediment transport, and new river channel parameters. Based on historical aerial photographs, stream classification (Rosgen), and geomorphological and river dynamic principles, the stream was reconstructed to its historical location and pools, riffles, spawning gravels, woody debris, and run sequences were restored to improve fish habitat and river functioning. TerraGraphics directed the construction contractor and worked closely with the revegetation contractor to implement rehabilitation and restoration designs. Upland plants were used in extensive revegetation of the riparian zones. Preliminary data has shown a decrease in water temperature and an increase in endangered species (Chinook Salmon).

##### **South Fork of the Coeur d'Alene River Restoration Pilot**

Project Schedule: 2002 to 2004

Contact: Nick Zilka, Idaho Department of Environmental Quality, Kellogg, ID (208) 783-5781.

Project Manager: Tom Bourque, P.E.

Lead Designer and Construction Manager: Erik Ryan

The South Fork of the Coeur d'Alene River has been heavily impacted for more than 100 years by heavy metals mining, smelting, and milling. This impact has significantly degraded the ecological and hydrologic system. As a result of large-scale mine tailings removals (250,000 cubic yards) on the one mile stretch of river between Kellogg and Smelterville, the site was left in an unstable condition with minimal vegetation and no fines or organic on the floodplain. TerraGraphics worked with the Idaho Department of Environmental Quality, EPA, Idaho Fish and Game, and the BLM to develop a pilot restoration project for this reach. Hydrology for the site was developed using historic and present USGS gages near the site. Survey of the site was completed using survey grade GPS and a robotic total station. From this data, existing topography, cross sections, thalweg profile, and water surface profiles were developed. A HEC-RAS model was assembled to model current and proposed river dynamics. Historic photos of the river allowed identification of stable nodes through the reach and areas subject to braiding. The emphasis of the project was on natural channel design with the use of stable nodes and limited bank stabilization recognizing the fact that the reach is located in the middle of

a highly impacted system. TerraGraphics developed construction plans and specifications and worked with the State to select a contractor for the project. In addition, TerraGraphics was responsible for construction direction and assisting with material acquisition. Water quality impacts were monitored throughout the project. Revegetation of the site emphasized the use of volunteers to increase community support of projects in the region.

### **Paradise Creek Stream Restoration Project, Moscow, Idaho Dry-Land Agricultural Land Stream System**

Project Schedule: 1997 to present. Annual projects designed and completed each year. Hours Worked 3,000.

Contact: Tom Lamar, Palouse-Clearwater Environmental Institute, Moscow, ID (208) 882-1444

Position: TerraGraphics - Prime Engineer

Tom Bourque: Project Manager

Erik Ryan: Design and Construction Engineer

TerraGraphics engineers planned, analyzed, designed, and provided construction oversight assistance for reconstructing five phases of Paradise Creek near Moscow, Idaho. Phase I restored 1,200 feet of stream and consisted of excavating 12,000 cubic yards to restore the original floodplain and installing a low flow and overflow channel, oxbow ponds, and stream bank treatments. Phase II consisted of floodplain improvements including stream bank treatments, revegetation, and a wetlands treatment system to polish City of Moscow Wastewater Treatment Plant effluent. Phase III consisted of developing conceptual engineering drawings featuring floodplain expansion, low flow and overflow channels, and stream bank treatments for restoring 1,200 feet of Paradise Creek near the University of Idaho campus. During Phase IV, floodplain modeling of the stream corridor and HEC-2 analysis on homeowner's properties was performed to determine possible impacts on the floodway from proposed modifications including log revetments. Phase V consisted of conceptual and construction drawings for restoring 3,000 linear feet of Paradise Creek through agricultural lands by developing the grading plan and channel alignment as well as vegetative covers on the stream banks and in the immediate vicinity of the channel.

Phases I, III, IV, and V utilized HEC-RAS computer model analysis for determining dominant flow and floodplain design. TerraGraphics worked with the Corps of Engineers and the Federal Emergency Management Agency to revise floodplain maps and obtain stream alteration permits. Restoration design included meanders, biofiltration treatment swales, multi-stage low/high flow channel section, stream bank stabilization, and wetland creation.

### **SMELTERVILLE FLATS FLOODPLAIN RESTORATION, BUNKER HILL SUPERFUND SITE, SHOSHONE COUNTY, ID**

Project Schedule: 1996-2002

Contact: Mr. Rob Hanson, Bunker Hill Project Officer (888)-800-3480

Position: TerraGraphics – State Prime Engineer

Tom Bourque: Project Engineer

The restoration of Smelterville Flats within the South Fork Coeur d'Alene River (SFCDR) basin is one of the largest floodplain reconstruction projects in state history. TerraGraphics provided hydraulic and hydrologic analysis, design oversight, and assisted with construction management. This \$35 million project was implemented as part of the Bunker Hill Superfund Cleanup.

The primary goal of the project was water quality improvement, fish and riparian habitat restoration, and sediment control within this reach of the SFCDR. Before restoration, Smelterville Flats had been a primary deposition zone for metals contaminated materials for more than 100 years. Due to the high metal releases and degraded floodplain, large-scale efforts were required to correct existing water quality and habitat problems.

## **FishXing Software Project**

### **Fish Passage Model based on Hydraulics, Hydrology, and Fish Swimming Abilities**

Project Schedule: 1997 – Present. Hours Worked 4000.

Contact: Michael Furniss, USDA Forest Service, Pacific Northwest Research Station, 3200 SW Jefferson Way, Corvallis, Oregon 97331, 541-758-7789

Position: Susan Firor, E.I.T. Lead Model Designer and Hydraulic Engineer.

Pronounced "Fish Crossing", FishXing is software designed to assist engineers, hydrologists, and fish biologists in the evaluation and design of culverts and other in-stream structures for fish passage. Susan Firor of TerraGraphics has been the lead developer and engineer on the FishXing project since the project's inception. The FishXing development team has created a unique model that compares hydraulic conditions at road crossings with fish swimming and leaping abilities. The model is highly customizable for use with a broad range of fish species and site conditions. FishXing is being used around the world and has been adopted by several local and federal agencies as official software for modeling road crossings. Hydraulic engineers and fisheries biologists alike have complemented FishXing for its accuracy and ease of use. Version 3, currently in final completion stage, adds many new features. It allows multiple side-by-side culverts at a single crossing site and hydraulic criteria-based analysis. The database of fish swimming abilities has been greatly expanded and access to the user improved. Hydraulic calculations now include adverse and no-slope culverts and pressurized flow. Output has been greatly expanded with customizable output options. Numerous flow characteristics are available over a range of flows and through the length of the culvert. Version 4, currently in development, will add passage at fords and low-head dams.

### **Milo Creek Flood Mitigation, Wardner, Idaho Sophisticated Hydraulic and Bedload Project**

Project Schedule: 1997-2000, Completed Fall 2000. Hours Worked: 10,000

Contact: Rob Hanson, Idaho Department of Environmental Quality, Boise, Idaho (208) 373-0290.

Position: TerraGraphics - Prime Engineer and Scientist

Tom Bourque: Engineer of Record, Project Manager, Construction Manager

Erik Ryan: Designer

*This project was a highly sophisticated design and construction oversight flood control project. Quality assurance, construction oversight systems, communications, and multi-stakeholder programs developed under this project will be utilized on Legacy Program projects.*

A 25-year flood event in May 1997 caused a great deal of damage in the cities of Kellogg and Wardner, within the Bunker Hill Superfund Site. In addition, residential yards were contaminated with heavy metals sediments resulting in 30 percent of the local children becoming lead poisoned. As a result of this flood event, a number of federal, state, and local agencies responded with funding (\$16-Million +) for a major flood improvement project. Five planning level documents were developed to assess existing conditions, conduct benefit/cost and feasibility analysis, present alternatives and cost, and present the engineering design of selected alternatives. A design was developed that incorporated specialty pipe materials, large concrete velocity (impact) control structures, sediment/bedload collection basins, and highly stable stream bank treatments into the final design. The system also provided new infrastructure (i.e., curbs and gutters) for the local residents. Project elements were based on large federal dam emergency spillway criteria and design features. TerraGraphics worked to establish the Milo Creek Watershed District that assumes local O&M responsibilities for the project.

#### **4.1.5 Staff Qualifications**

Brief biographies for key personnel who would be working on the assigned project can be found below.

Complete TerraGraphics staff resumes and Key Personnel Description Chart are included in Appendix A.

#### **Project Manager - Tom Bourque, P.E.**

**Mr. Bourque** is the Principal-in-Charge and Engineering Manager with TerraGraphics Environmental Engineering. He will be responsible for management, project quality, and interaction with FWP. In his

seventeen years of experience as a project engineer and manager, he has developed conceptual and final project design, performed hydrologic and hydraulic modeling analysis, designed river restoration/reconstruction, directed environmental statements, produced planning and management documents, and managed project personnel and construction activities. He has engineered many watershed rehabilitation, environmental reconstruction, flood control systems, and river restoration projects. He has been the State's lead engineer on Idaho's largest non-nuclear environmental cleanup for a decade. He developed technical approaches including engineering, restoration, costs, and State obligations for more than 300 projects totaling more than \$1 billion. Mr. Bourque has worked with government agencies, public entities, and private individuals on projects ranging from \$15,000 to \$200,000,000. Mr. Bourque's project management experience includes scopes of work, budgets, cost estimates, engineering design, engineering modeling, watershed reconstruction, environmental restoration, costing/cash flow analysis, subconsultant management, and construction administration. Mr. Bourque has had specialize river geomorphology and engineering training, taught workshops, and spoke at conferences on the subject of stream restoration and environmental rehabilitation.

#### **Project Administrator – Jerry Lee, M.S., B.S., Environmental Science**

Mr. Lee earned a B.S. in Environmental Science and General Agriculture and a M.S. in Environmental Science. His primary responsibilities at TerraGraphics include oversight of all site characterization activities, including sampling and monitoring; Phase I, II, and III Environmental Site Assessments (ESAs); Risk-Based Corrective Action (RBCA) modeling; personnel tracking; budget planning/tracking; and client relations. Jerry Lee has been coordinating efforts for the 21 square mile water quality assessment program for the Bunker Hill superfund site for the last 14 years. Other key responsibilities include integrating environmental and engineering components of sites to maximize future redevelopment options, and presenting scientific project information to the public. Mr. Lee also oversees data Quality Assurance/Quality Control (QA/QC), health & safety, training, remedial efforts at hazardous waste sites, and the writing of permit applications. For the past 10 years, he has been the Administrative Project Manager for the TerraGraphics Bunker Hill Superfund Site activities.

#### **River Engineer – Erik Ryan, E.I.T.**

**Mr. Ryan** is an environmental engineer for TerraGraphics Environmental Engineering and would be lead designer for the project team. He is experienced in stream restoration engineering, natural river channel analysis and design, geomorphology, environmental engineering, Geographical Information System (GIS), Global Positioning System (GPS), engineering design, and hydrology. Mr. Ryan has performed design and construction engineering on multiple stream restoration projects for TerraGraphics. In this capacity, he was responsible for surveying, collecting the information necessary for HEC-RAS and MIKE 11 modeling, performing GIS analysis, and directing construction. Mr. Ryan is familiar with the Haestad modeling products. He also assured that sediment and erosion control programs were implemented during river restoration activities to maintain minimum water quality standards, performed best management practices (BMPs), and utilized construction techniques to minimize impacts on the local area. Finally, Mr. Ryan has specialized training in stream and wetland development and hydrology.

#### **Hydraulic Engineer - Susan Firor, E.I.T.**

Ms. Susan Firor is an engineering hydrologist for TerraGraphics Environmental Engineering. She has Bachelor's and Master's degrees in Environmental Engineering. She has six years of experience modeling river hydraulics and fish kinetics. Since 1998 Susan has been the lead developer and engineer for the FishXing model, a US Forest Service computer program used in the assessment and design of culverts and other in-stream structures for fish passage. Her research interests include fish passage issues, fluvial geomorphology, hydraulic and hydrologic modeling. She is experienced in stream restoration engineering, engineering design, wetland delineation and engineering, hydrology, hydraulic and geomorphic design of fish passage structures, assessment and analysis of roads and culverts, water quality monitoring, data analysis, and database management systems.

#### **Environmental Scientist – Jon Munkers, M.S. in Environmental Science, B.S. Chemistry**

Mr. Munkers has a B.S. in Chemistry and Human Biology and a M.S. in Environmental Science with a focus on environmental assessment and characterization. Mr. Munkers has performed numerous large environmental



site assessments and characterizations, including: Morning Mine Waste Pile Characterization, L.P. Mill Site Characterization, Colville Confederated Tribes Agency Campus Brownfields Assessment, Colville Confederated Tribes Reservation Assessment, and many other Phase I and II Environmental Site Assessments throughout the Northwest. Mr. Munkers is familiar with a variety of field test equipment, analytical protocols, QA/QC, and reporting methods. In addition, he has written a number of federal grants that were selected for funding from agencies such as HUD and EPA, totaling over \$500,000 in 2003. Mr. Munkers has also conducted a number of public meetings and led round-table discussions at major conferences, most recently at the National Brownfields Conference in Portland, OR, at which there were over 4000 attendees.

**River Restoration Specialist - Ms. Karen Williams, E.I.T.**

**Ms. Williams** is a water resources engineer who has more than seven years professional experience working on stream and river restoration in Montana. Ms. Williams' will be a design engineer for Legacy projects. She has a Bachelor's degree in Aerospace Engineering, a Master's degree in Environmental Engineering, and is currently working on a Ph.D. in Fluvial Geomorphology. Her experience includes stream restoration, project management, construction oversight, hydraulic engineering, and urban water resource management. In addition, she has performed hydraulic and hydrologic modeling to identify areas of channel instability, validated proposed stream designs, and performed floodplain mapping.

**Environmental Scientist - Meghan Wilson**

**Ms. Wilson** is an Environmental Scientist with TerraGraphics. She has a BS in Environmental Science and is working on a MS in Environmental Management. She has evaluated the effectiveness of various revegetation strategies at abandoned gold mine sites across Montana. Ms. Wilson also has experience in grant writing as well as experience in research, Quality Assurance/Quality Control (QA/QC) protocol, data analysis and entry including the production of technical material and reports

**CAD Draftsperson - Ms. Brandi Rollins**

**Ms. Rollins** is a CAD draftsperson for TerraGraphics Environmental Engineering and will provide design support. She has an A.A.S. in Civil Drafting/Design with additional studies GIS. She has been involved with the Coeur d'Alene Basin Cleanup Project creating plot plans and various related maps. She has had prior experience in generating such maps via working for another company on the same project. She is also experienced with MS Access utilizing relational databases.

**Engineering Technician - Ryan Kobbe, E.I.T.**

**Mr. Kobbe** is a graduate student at University of Idaho currently working on his Master of Civil Engineering. Mr. Kobbe will provide support in hydrologic calculations, AutoCADD, and general project tasks.

## APPENDIX A: STANDARD TERMS AND CONDITIONS

**By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.**

**ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES:** The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

**ACCESS AND RETENTION OF RECORDS:** The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

**ALTERATION OF SOLICITATION DOCUMENT:** In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

**AUTHORITY:** The following bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**COMPLIANCE WITH LAWS:** The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

**CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

**DEBARMENT:** The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

**DISABILITY ACCOMMODATIONS:** The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**FACSIMILE RESPONSES:** Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

**FAILURE TO HONOR BID/PROPOSAL:** If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

**FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

**HOLD HARMLESS/INDEMNIFICATION:** The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

**LATE BIDS AND PROPOSALS:** Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

**PAYMENT TERM:** All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors may be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

**RECIPROCAL PREFERENCE:** The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://www.discoveringmontana.com/doa/gsd/css/Resources/ReciprocalPreference.asp>.

**REFERENCE TO CONTRACT:** The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

**REGISTRATION WITH THE SECRETARY OF STATE:** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.state.mt.us>.

**SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

**SHIPPING:** Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

**SOLICITATION DOCUMENT EXAMINATION:** Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

**TAX EXEMPTION:** The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

**TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED:** Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

**TERMINATION OF CONTRACT:** Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

**UNAVAILABILITY OF FUNDING:** The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

**U.S. FUNDS:** All prices and payments must be in U.S. dollars.

**VENUE:** This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

**WARRANTIES:** The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

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Revised 11/03